

Creedon Controls, Inc.
Patricia Creedon, Volume 1

v.
C.A. # 05-CV-300-JJF

Banc One Building Corporation
May 22, 2006

1 for this job?
2 **A. No, they did not.**
3 Q. When you went to Wilmington Trust, did you give
4 Wilmington Trust a copy of either Creedon 11, 12, 15
5 or 16, that is, the letters from Mr. Angarame that are
6 countersigned by you on the bottom?
7 **A. I believe I gave him a letter of, a copy of the**
8 **letter of intent or Wilmington Trust a copy of a**
9 **letter of intent, yes.**
10 Q. Do you know which one of those you gave to
11 Wilmington Trust?
12 **A. No, I do not.**
13 Q. Do you know whether anyone from Forest Electric
14 ever told you that they had authority to negotiate the
15 terms of the contract document which is attached to
16 Creedon 16?
17 **A. It was my understanding that all the**
18 **contractors on the site got this contract. So yes, I**
19 **believe they had authority to negotiate a contract.**
20 Q. Prior to the time of your sending the
21 communication which is Creedon 17, did you have any
22 other communication with Forest Electric as to the
23 basis of the contract document which was attached to
24 Creedon 16?

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1 **A. Yes.**
2 Q. And what communication did you have?
3 **A. I had a telephone conversation with Paul**
4 **Angarame of Forest Electric.**
5 Q. And what was the substance of that
6 conversation, please?
7 **A. That it was going to take me a little longer**
8 **than 14 days to turn around the contract with any**
9 **revisions or points for negotiations.**
10 Q. And why was that?
11 **A. Because I allowed myself 14 days on an**
12 **eight-page sample subcontract, and I received a**
13 **60-page prime contract. I knew it was going to take**
14 **me longer than 14 days.**
15 Q. When you say it was a 60-page prime contract --
16 **A. Pardon me?**
17 MR. PATRIZIA: Would you read that
18 question back to the witness, please?
19 (The requested portion was read.)
20 Q. What do you mean?
21 **A. To me it looked like a prime contract.**
22 Q. Did you understand, did you have any
23 understanding whether the owner was a party to this
24 contract?

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1 **A. I saw signature lines for people as**
2 **representatives of the owner, yes.**
3 Q. Did you look at the first page of the document
4 which is 6114 at the bottom, the last two lines which
5 says, "Electrical trade manager and construction
6 contractor agree to the terms and conditions"?
7 **A. And my modification in addendum 1 was to change**
8 **between electrical trade manager and construction**
9 **contractor to between Banc One Building Corporation,**
10 **electrical trade manager agent, and construction**
11 **contractor.**
12 Q. That was your proposal?
13 **A. That's my proposal.**
14 Q. The form as presented to you was between the
15 electrical trade manager and contractor; is that
16 right?
17 **A. Correct.**
18 Q. Why did you want the contract to be inclusive
19 of Banc One in your comments?
20 **A. My understanding was that Forest was working**
21 **on, as an agent for representing Banc One.**
22 Q. What was the basis of your information that
23 Forest was working as an agent?
24 **A. I don't recall off the top of my head.**

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1 MR. SEGLIAS: Well review the document,
2 see if that --
3 THE WITNESS: Okay, okay.
4 **A. I suppose the term "electrical trade manager."**
5 Q. Did anybody from Forest Electric ever show you
6 a contract in which Forest Electric was appointed an
7 agent?
8 **A. Paul Angarame told me they signed, he said they**
9 **signed a contract very similar to this, yes.**
10 Q. Did he show you such a contract?
11 **A. No, he did not.**
12 Q. Did he show you any contract in which Forest
13 was appointed an agent of the Banc One Building
14 Corporation?
15 **A. No, he did not.**
16 Q. Did you ever see any document in which Forest
17 or Tishman sought approval from Banc One Building
18 Corporation to enter into a contract with Creedon
19 Controls?
20 **A. No, I did not.**
21 Q. Did you ever see a document in which Forest or
22 Tishman represented that the contract that they were
23 entering into or that Forest was entering into was a
24 subcontract with Creedon Controls?

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1 **A. No, I did not.**
 2 Q. At the time that you submitted the comments
 3 which are in Creedon 17, is it the case that Creedon
 4 Controls had already made the claims which are at
 5 issue in this litigation for additional payment?
 6 **A. I'm not sure if we had quantified what those**
 7 **were at that time, but we had gone to the Banc One**
 8 **management team and told them that there were some**
 9 **circumstances beyond our control and that there would**
 10 **be some change orders coming. We didn't -- we did --**
 11 **at that point I'm not sure when we knew what the, what**
 12 **the value of that was going to be at that time.**
 13 Q. Was one of your purposes in submitting the
 14 comments which are in Creedon 17 to assure that you
 15 were not waiving any claims for those change orders
 16 that you were going to submit?
 17 **A. Yes.**
 18 Q. Would you look back at Creedon No. 15, please?
 19 And look at page 684.
 20 **A. Yes.**
 21 Q. The second paragraph of Roman XIV.
 22 **A. Yes.**
 23 Q. What is your understanding of that paragraph?
 24 MR. SEGLIAS: Object to the question to

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1 Forest Electric?
 2 **A. Would you repeat that?**
 3 Q. Yes. At the time Creedon Controls began work
 4 on this project in October of 2003, was it your
 5 understanding that there was a contract with Forest
 6 Electric for this work?
 7 **A. It was my understanding there was a pending**
 8 **contract.**
 9 Q. Well, let's go back a step, Miss Creedon. Was
 10 it your understanding that you were beginning work
 11 without any agreement at all?
 12 **A. It was my understanding I was proceeding with a**
 13 **letter of intent.**
 14 Q. And that letter of intent was with Forest
 15 Electric?
 16 **A. Correct.**
 17 Q. And it was your understanding that there would
 18 be some written documentation of that agreement at
 19 some point?
 20 **A. Correct.**
 21 Q. When did you expect to receive that written
 22 documentation?
 23 **A. I expected to receive it shortly after I had**
 24 **started the project.**

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1 the extent it calls for legal conclusion or a legal
 2 answer. However, you can describe your layman's
 3 understanding of what you think that means.
 4 MR. PATRIZIA: I agree, Miss Creedon is
 5 not counsel and I'm only asking for her layperson's
 6 understanding.
 7 MR. SEGLIAS: Right.
 8 **A. Well, I knew I didn't -- I knew I had questions**
 9 **about it. I wasn't going to spend a lot of time**
 10 **worrying what those questions were. That's why I put**
 11 **a little notation on it, and if it had presented**
 12 **itself in an executable contract form, I would have**
 13 **sought more guidance on it.**
 14 Q. When you say you would have sought more
 15 guidance, from whom would you have sought guidance?
 16 **A. Somebody knowledgeable in construction**
 17 **contracts.**
 18 Q. Would that have included counsel, or was there
 19 someone else you had in mind as knowledgeable?
 20 **A. Most likely would have, at that time, would**
 21 **have been counsel.**
 22 Q. At the time that Creedon Controls began work on
 23 the project in October of 2003, was it your
 24 understanding that the work was under contract to

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1 Q. And was it your understanding that Creedon
 2 Controls in commencing work in October of 2003 had
 3 commenced work based on at least an oral contract?
 4 MR. SEGLIAS: Objection. Calls for a
 5 legal conclusion.
 6 MR. PATRIZIA: Will you permit the witness
 7 to answer to her layperson's understanding?
 8 MR. SEGLIAS: I will.
 9 MR. PATRIZIA: Thank you.
 10 **A. In my layperson's -- I'm not quite sure what an**
 11 **oral contract is, so --**
 12 Q. Did you feel like you had an agreement?
 13 **A. I'm not sure how to answer that, because if**
 14 **they had present -- if they had presented a contract**
 15 **that we could not negotiate terms on, I was not -- I**
 16 **was unclear of how that would resolve itself.**
 17 Q. Would you have stopped work if you couldn't get
 18 a written agreement that met your requirements?
 19 **A. That would be supposition. I don't know.**
 20 Q. At the time that you first became aware
 21 sometime in early 2004 that the work was going to take
 22 longer and cost more to complete than was in your
 23 original proposal, did you believe that you had a
 24 contract?

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1 gotten this e-mail and this without writing on it, as
 2 well as this without any writing on it. They would --
 3 Q. "This" is the third page, the general release?
 4 A. Yes, sorry. Yes, the general release and the
 5 final waiver of liens and release of claims. There
 6 would have been no notations on it when we received
 7 it.
 8 Q. And then you believe Mr. Link at some point may
 9 have marked it up?
 10 A. Yes.
 11 Q. At the time that Mr. Link marked it up, did you
 12 make a request to him to mark it up?
 13 A. Not that I recall. I may have.
 14 Q. Do you know whether Mr. Doble, in the course of
 15 his role as project manager and preparing
 16 work-in-process forms for you, would have been
 17 tracking the actual extent of completion of the
 18 project month by month?
 19 A. Do you mean estimating completion to the end by
 20 month by month, because it is an estimation, a work in
 21 process is an estimation of your cost to complete.
 22 Q. Well, I guess I would understand that to do an
 23 estimate of the cost to complete, you would have to
 24 know how much work had been completed to date at what

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1 we estimated the cost to complete.
 2 Q. When did, when did Creedon Controls begin to
 3 keep the delta graph or the daily form of work left to
 4 complete?
 5 A. That I recall?
 6 Q. Yes.
 7 A. Somewhere April. That doesn't mean it wasn't
 8 done before that.
 9 Q. I understand that. But I don't know --
 10 A. Yeah, okay.
 11 Q. -- whether it means it was or it wasn't done.
 12 But my next question was going to be whether you
 13 recall seeing those kinds of documents prior to April
 14 of 2004?
 15 A. Not typically from my project managers.
 16 Q. You indicated to me earlier that you recall
 17 Mr. Doble coming to you in March of '04 to indicate as
 18 you were going over the February numbers that the work
 19 was going to take more resources than was available
 20 remaining on the contract billing amount. Is that
 21 right?
 22 A. That's correct.
 23 Q. Do you recall when in March that occurred?
 24 A. No.

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1 cost. Right?
 2 A. Yes.
 3 Q. And from that you would then try to make an
 4 estimate of how much additional work remained.
 5 A. Correct.
 6 Q. And how many dollars it was going to take --
 7 A. Correct.
 8 Q. -- to do that work.
 9 A. Correct.
 10 Q. So I guess my question was did Mr. Doble track
 11 the work actually completed to date as part of his
 12 effort to fill out the work-in-process forms and make
 13 an estimate of the work to be completed?
 14 A. That would be -- yes, that would be my --
 15 Q. Did he ever show those documents to you?
 16 A. Yes.
 17 Q. Do you have copies of those documents somewhere
 18 in your files?
 19 A. They have been presented.
 20 Q. In what form are those documents kept?
 21 A. Schedules; the -- we did a delta graph of how
 22 many hours we estimated to complete. We did a daily
 23 schedule of how many hours we thought we had left to
 24 complete. We -- there were several formats in which

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1 Q. Do you recall Mr. Doble ever having that
 2 discussion with you earlier than March of '04?
 3 A. My recollection is no, no. I would not have
 4 recollected that.
 5 Q. Do you recall any indications in the
 6 November/December time frame that either the pace of
 7 the work had shifted or the amount of effort involved
 8 was greater than Mr. Doble anticipated when he did his
 9 original estimate for the bid?
 10 A. In November and December?
 11 Q. November and December of '03.
 12 A. No, I was tracking hours and we had not -- it
 13 did not look out of range, no.
 14 Q. Do you recall whether there were more hours in
 15 the December time frame than appeared to be consistent
 16 with the estimate as it had originally been submitted?
 17 A. No, I don't recall that.
 18 Q. At any point in the November/December time
 19 frame as you got to year end, did you ask Forest where
 20 the executable contract was?
 21 A. I believe I had a conversation with Paul
 22 Angarame asking for the executable contract, yes.
 23 Q. Do you recall when that conversation occurred?
 24 A. I believe it was the November, the November

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1 **time period.**
2 Q. What did Mr. Angarama say to you in response?
3 **A. That they hadn't gotten any of the contracts**
4 **together yet.**
5 Q. Did he tell you why they hadn't gotten the
6 contracts together yet?
7 **A. They said they hadn't executed a contract yet.**
8 **Therefore, they weren't going to issue contracts.**
9 Q. Do you know when Forest ever executed a
10 contract with Banc One Building Corporation or
11 Tishman?
12 **A. No.**
13 Q. Did you ever see such an agreement?
14 **A. No.**
15 Q. Would it surprise you that there was a contract
16 in place as early as October of 2003 between Tishman
17 Construction of Maryland and Forest Electric?
18 **A. No.**
19 Q. If such a contract were in place, why would
20 Mr. Angarama have told you that there was no contract
21 in place?
22 MR. SEGLIAS: Objection. Unless
23 Mr. Angarama made such a statement to you, there's no
24 need to speculate about what was in his mind.

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1 problems in scheduling the work or in accomplishing
2 the work in the December 2003 time frame?
3 **A. Not in the first part. There was a minor**
4 **glitch in December.**
5 Q. What was the minor glitch in December?
6 **A. I can't recall off the top of my head.**
7 **Something happened in December. We had a blip in**
8 **the -- we had a spike in the costs and I was asking**
9 **him about it.**
10 Q. Did that spike in cost cause you any concern in
11 terms of being able to complete the work for the bid
12 amount?
13 **A. No, because we were generally ahead of schedule**
14 **at that time.**
15 Q. In January of '04 did Mr. Doble indicate to you
16 that there were problems in accomplishing the work on
17 the site in that month?
18 **A. No.**
19 Q. Did Mr. Doble indicate to you in February of
20 '04 that there were problems in accomplishing the work
21 on the site?
22 **A. When we were reviewing the numbers from**
23 **February, we had a conversation about we're not going**
24 **to be able to finish this project.**

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1 MR. PATRIZIA: I certainly don't want
2 speculation, quite correct, Counsel.
3 MR. SEGLIAS: So if he said something to
4 you, you can testify to that.
5 THE WITNESS: Okay.
6 MR. SEGLIAS: About why Forest --
7 THE WITNESS: Okay. There was a lot of
8 rumor and speculation going on on the job site.
9 Q. What was the rumor and speculation?
10 **A. Oh, with electricians, it's hard to tell. They**
11 **had all manner of -- all of the contractors that I**
12 **knew of were complaining they did not have contracts,**
13 **that they had expended millions of dollars and still**
14 **hadn't got a contract. They were working under**
15 **letters of intent and it was causing concern. And**
16 **couldn't get through to anyone to find out why they**
17 **weren't getting contracts.**
18 Q. Did Mr. Doble, in the course of his activity as
19 project manager, indicate to you in the November 2003
20 time frame that he was having any difficulties in
21 terms of scheduling work or other implementation of
22 the 6B contract?
23 **A. Not that I recall.**
24 Q. Did he give you any indication that there were

1 Q. And that's the same conversation that we
2 discussed a little bit ago as your first understanding
3 from Mr. Doble that the contract completion was going
4 to cost more than was in the original amount?
5 **A. Correct, correct.**
6 Q. And this occurs sometime in March of '04 as
7 you're looking at the February numbers?
8 **A. Correct.**
9 Q. Was there something about that conversation in
10 which he indicated that there had been delays on site,
11 or simply that it was going to cost more to complete
12 the work?
13 **A. It was more that the, the contract was spread**
14 **so far over so many areas that it was hard to get a**
15 **read on how much was being done at any one time in any**
16 **one room in any one area. So it was -- it was not as**
17 **anticipated on bid day where they, he could work crews**
18 **and it could be contiguous or within a certain area at**
19 **a certain time. So there was -- when he came and**
20 **talked to me, it was a number of reasons why he felt**
21 **that we weren't going to be -- it wasn't just one**
22 **reason. There were several reasons why he didn't**
23 **think, based on the February numbers, that we were**
24 **going to be able to complete for the contract amount.**

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1 Q. That's why I asked whether you know.
2 **A. I do not know.**
3 Q. You do not know. You were the apparent
4 successful bidder.
5 **A. In my mind, I was the successful low bidder on**
6 **that project.**
7 Q. Okay. Then there is a reference in item 4 to a
8 package for the second IT cable conveyance job for pod
9 B.
10 **A. Yes.**
11 Q. It says, "Charlie to estimate and negotiate pod
12 B including an additional 250K to mitigate the cost
13 overruns for job 2357." Do you see that?
14 **A. I do.**
15 Q. What's your understanding of what that
16 discussion was?
17 **A. That they were trying to mitigate the cost**
18 **overruns of \$250,000.**
19 Q. So there was going to be included in whatever
20 estimate Charlie made -- and Charlie's Mr. Doble?
21 **A. That is correct.**
22 Q. Mr. Doble was to include an extra \$250,000 in
23 that estimate, and that amount was to count against
24 the putative cost overruns on the 6B job?

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1 **shift." So, you know, we kind of fought them and**
2 **asked them, "Please don't let us, make us cut the**
3 **night shift." And they said, "Cut the night shift."**
4 **So we cut the night shift.**
5 Q. So your understanding is that Creedon was
6 directed to cut the night shift?
7 **A. Yes, um-hum.**
8 Q. Item 12 says, "Charlie was asked to create a
9 detailed schedule based on 6,000 hours versus
10 Creedon's 12,000." Can you tell me what that relates
11 to?
12 **A. There was a set of documents that had preceded**
13 **this meeting, and it probably generated this meeting.**
14 Q. Do you recall ever seeing the letter that
15 Mr. Angarame was to generate recapping the meeting --
16 **A. No.**
17 Q. -- that's marked in item 14?
18 **A. No, I didn't see much from them at all,**
19 **anything.**
20 MR. PATRIZIA: Let's mark this as 39,
21 please.
22 (Creedon Exhibit No. 39 was marked for
23 identification.)
24 Q. Have you seen this document before, Miss

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1 **A. Correct.**
2 Q. And that was your understanding going into this
3 discussion, was that if they awarded you that
4 additional contract, that was going to include the
5 extra money?
6 **A. No, not going into this contract, no.**
7 Q. I'm sorry, going into --
8 **A. Not into this meeting, no, it was not.**
9 Q. It was your understanding coming out of the
10 meeting?
11 **A. Yes.**
12 Q. Okay. Item 11 says, "Creedon was asked to cut
13 night-shift manpower even though second shift was most
14 productive."
15 **A. Yes.**
16 Q. Would you tell me your understanding of that
17 portion of the conversation in the meeting?
18 **A. Well, Tishman and Forest were saying, "You**
19 **don't need night shift. Night shift costs money, cut**
20 **your night shift." And we kept saying don't -- you**
21 **know, "You're saving pennies and wasting dollars.**
22 **We're more productive at night shift. We can get more**
23 **work done. We're not, you know, we don't have the**
24 **constraints on us at night shift as we do at day**

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55 (Pages 214 to 217)

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1 not heard that discussion?	1 about that?
2 A. No, absolutely not.	2 A. I'm sure I did. I also talked to the
3 Q. And then Mr. Doble states, "I stated we	3 contractor on the other site and he said join the
4 notified as soon as we realized and quantified	4 club.
5 impact." Do you see that?	5 Q. When you say you talked with the other
6 A. I do.	6 contractor on the other site, I'm sorry, what do you
7 Q. Was it your understanding that based on your	7 mean?
8 phone call with Mr. Angarama at the end of March, that	8 A. Yes. I talked to the other contractor who was
9 you had notified earlier and just had not been able to	9 performing work on the Bear site.
10 quantify impact at that point?	10 Q. And who was that?
11 A. That was my understanding.	11 A. Well, at the time it was Kevin Dare at Hatzel &
12 Q. Did you indicate that understanding at the	12 Buehler.
13 meeting?	13 Q. And what conversation did you have with
14 A. Excuse me?	14 Mr. Dare?
15 Q. Did you indicate that understanding at the	15 A. I said, "I'm not going to go into specifics,
16 meeting in response to the discussion of this issue?	16 but I'm wondering how close to your bid you are and
17 A. No, but it looks like Charlie did.	17 how much more you think you have to complete." And he
18 Q. Item 3, "Additional hours, 13,300 to date plus	18 said, I believe he said we've -- "We're going to
19 12,000 to finish." What do you understand that to	19 double our hours." At that point --
20 mean?	20 Q. When did you have that conversation with
21 A. Well, I would understand that to mean that we	21 Mr. Dare, do you recall?
22 had expended 13,300 over what we had anticipated to	22 A. No, I do not.
23 date, and we had another 12,000 to finish.	23 Q. Item (l) under 3 on the second page, Mr. Doble
24 Q. So the 13,300 is 13,300 over what the original	24 seems to say that Tom and Paul both stated Creedon
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1 estimate was?	1 needs to cut manpower. Is there any reference there
2 A. That was -- that's what I believe. I could be	2 to cutting the night shift specifically as opposed to
3 wrong.	3 cutting manpower generally?
4 Q. Do you know how many hours had been included in	4 A. Doesn't look like he's made reference to a
5 the original estimate?	5 night-shift cut.
6 A. I believe 20 -- somewhere in the neighborhood	6 MR. PATRIZIA: Would you mark this one as
7 of -- it's back in there somewhere.	7 40, please.
8 Q. It is. I'm just asking you if you remember.	8 (Creedon Exhibit No. 40 was marked for
9 The documents are --	9 identification.)
10 A. I think it's 29,000, somewhere in the	10 Q. I'm showing you what's been marked as Creedon
11 neighborhood of 29,000 and then there was an allowance	11 40, and that's a document which is titled "Critical
12 for an additional thousand hours.	12 events." It's dated April 19. Have you seen that
13 Q. So let's say in rough terms 30,000, and this	13 document before?
14 was going to be another 25,000 hours.	14 A. I have.
15 A. Correct.	15 Q. Do you know who prepared that document?
16 Q. Almost double --	16 A. It was Charlie Doble, Dennis Link, and
17 A. Yes.	17 interviews and reviews with the, Paul Brainard, Fred
18 Q. -- the original estimate.	18 Street, John Mulrooney, and a few more site
19 A. Yes.	19 supervisors on the project.
20 Q. Were you surprised to understand that the	20 Q. Okay. Well we've been through site
21 estimate now was almost double the original estimate	21 supervisors, Mr. Brainard, Mr. Street, I thought
22 that Mr. Doble had prepared?	22 Mr. Sharp?
23 A. Yes.	23 A. Yes.
24 Q. Did you have any conversation with Mr. Doble	24 Q. And Mr. Mulrooney?

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1 **A. Yes.**
2 Q. What other, quote unquote, supervisors are you
3 referencing in terms of the interview process that
4 supported this document?
5 **A. Okay, there were possibly, I know there was at**
6 **least one, there maybe had been another site**
7 **supervisor who had kept a daily log.**
8 Q. Do you know who that supervisor was?
9 **A. I wish I could remember their names, but no, I**
10 **don't.**
11 Q. You mentioned daily logs. What do you mean by
12 a daily log?
13 **A. Daily logs would be what a foreman or general**
14 **foreman would do on a daily basis on a job.**
15 Q. In what form are these kept?
16 **A. In bound marbled copy books, copyright books.**
17 Q. Are they always bound or are they sometimes a
18 spiral bound?
19 **A. Most times they're bound.**
20 Q. When the general foreman keeps that log, what
21 does he do with the log at the end of the project?
22 **A. He should turn them over to me.**
23 Q. Do you have all of the logs, the daily logs
24 from this project?

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1 Q. Okay. And you said that Mr. Doble and Mr. Link
2 worked on this based on Mr. Doble's information and
3 the interviews. Did anybody else participate in the
4 preparation of this list?
5 **A. The preparation, yes.**
6 Q. Who?
7 **A. I believe Kristin did some of the typing and**
8 **the formatting.**
9 Q. Okay. Kristin being Kristin Cerase?
10 **A. Yes, sorry, yes, Kristin Cerase.**
11 Q. Was there any person other than Mr. Link,
12 Mr. Doble, the people who were interviewed, and Miss
13 Cerase?
14 **A. Not that I can recall.**
15 Q. This version is dated April 19, 2004.
16 **A. Yes.**
17 Q. Do you know whether there were earlier drafts
18 of this document?
19 **A. Possibly.**
20 Q. Is this the document that is referenced in the
21 meeting notes as to the critical events list?
22 **A. I can't be sure, but I would -- we sent a**
23 **similar document to Forest, and this looks like what**
24 **we sent them.**

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1 **A. I believe I do.**
2 Q. Do you keep those in Creedon's files
3 ordinarily?
4 **A. Yes, I would.**
5 Q. Is it in the ordinary and usual course of
6 business for you to keep those logs in the file?
7 **A. Yes, it would be.**
8 Q. And when you say you keep them, are you talking
9 about you personally or someone on your staff?
10 **A. Someone on my staff.**
11 Q. Who on your staff would keep them?
12 **A. It would be the general or the, with all the**
13 **documentations regarding the job. So it wouldn't --**
14 **it would be in the same place you would find the**
15 **contract, where you'd find the general conditions,**
16 **where you would find the plans and specs, where you'd**
17 **find the submittals. So it would just be -- there's**
18 **no special place for just job logs.**
19 Q. Okay. So in the file for the project, there
20 would be the contract documents, the daily logs and
21 other related documents related to that project?
22 **A. Correct.**
23 Q. Copies of the requisition submittals?
24 **A. Yes.**

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1 Q. At the back of this document, Creedon 5693,
2 there's an estimate to complete as of 4-16, which
3 totals 11,990 hours. Do you see that?
4 **A. Yes, I do.**
5 Q. Is that the basis of the 12,000 hours that was
6 in the earlier notes?
7 **A. I believe so.**
8 MR. PATRIZIA: This is 41.
9 (Creedon Exhibit No. 41 was marked for
10 identification.)
11 Q. Showing you a document which has been marked as
12 Creedon 41. Well the good news, Miss Creedon, is
13 we've got 20 minutes and we're going to get through
14 it.
15 **A. Okay.**
16 Q. So don't worry about rippling the pages, okay?
17 **A. Okay.**
18 Q. First of all, do you recognize that document?
19 **A. I do.**
20 Q. Who prepared this document?
21 **A. Some of it was prepared by me, some was**
22 **prepared by Kristin, some was prepared by Charlie**
23 **Doble, some was prepared by Dennis Link. See if I can**
24 **see anybody else's handiwork in here. Some was**

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1 **prepared by Banc One. Some was prepared by Forest. I**
 2 **believe I -- well, I believe I covered all that may**
 3 **have had a hand in the preparation.**
 4 Q. This is obviously a rather formal compilation.
 5 There is a table of contents, there are tabs.
 6 **A. Yes.**
 7 Q. For whom was this compiled?
 8 **A. For my banker.**
 9 Q. And when you say your banker, this is someone
 10 at Wilmington Trust?
 11 **A. Yes.**
 12 Q. What was the purpose of preparing this
 13 document?
 14 **A. We were -- the line of credit had an**
 15 **anniversary date of sometime in August. And I knew**
 16 **that in August I would not be able to repay them.**
 17 Q. You knew as of June that come the end of the --
 18 **A. Yes.**
 19 Q. -- line of credit in August, you would not be
 20 capable of repayment in August.
 21 **A. Correct.**
 22 Q. Now if we look at the second page of this
 23 document, which is CL 0523 --
 24 **A. Yes.**

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1 **A. I don't remember ever opening up this and**
 2 **finding anything other than the table of contents**
 3 **first. So these, I don't know why they would be in**
 4 **here as they are. But they are.**
 5 Q. Well, let me ask you this, because it may
 6 refresh your recollection. If you'd turn to 721, CL
 7 721, it's further in the back of the document.
 8 **A. Okay.**
 9 Q. Okay. There is what appears to be a new cover
 10 sheet.
 11 **A. CL 721.**
 12 Q. And then 722 is "Follow-Up Banc One documents."
 13 **A. Yes, okay.**
 14 Q. And there is a new table of contents.
 15 **A. Yes, okay.**
 16 Q. Which is events post August 2.
 17 **A. Okay.**
 18 Q. Is it possible that there was an updated
 19 version of this that went later than the original date
 20 of June 30 and this got put in?
 21 **A. Possible, yes.**
 22 Q. Is that possible?
 23 **A. That is possible.**
 24 Q. Do you recall that?

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1 Q. -- there are two bar charts.
 2 **A. Yes.**
 3 Q. And they indicate that the original estimate
 4 was 22,620 hours, plus an allowance of 1,000 hours?
 5 **A. Okay.**
 6 Q. Invoiced change orders of 6,610 and a half
 7 hours.
 8 **A. Okay, that's where the 29 or 30,000 -- okay,**
 9 **yes.**
 10 Q. And then the projected difference of 34,819?
 11 **A. Yes, but this is out of sequence. I am kind of**
 12 **puzzled why this says 9-12-04 and this says June 30th**
 13 **of 2004.**
 14 Q. I don't know. All I can tell you is that they
 15 were given to us in this sequence.
 16 **A. Okay.**
 17 Q. If you look at the Bates numbers, it's 522 and
 18 then 523.
 19 **A. Okay.**
 20 Q. So I was going to ask you the same question,
 21 which is we've got a June 30, 2004 date on the front
 22 and a September --
 23 **A. I'm not sure why --**
 24 Q. -- '04.

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1 **A. Yes, I do, yes.**
 2 Q. If you look at the third page of the document,
 3 CL 0524?
 4 **A. Yes.**
 5 Q. This is marked as attachment 3.B in the upper
 6 right-hand corner?
 7 **A. Yes, um-hum.**
 8 Q. Do you know what this was an attachment to?
 9 **A. It created this.**
 10 Q. Okay. We need to go through this so we can see
 11 "this."
 12 **A. Here we go.**
 13 Q. CL 524 was the data that was used to support
 14 the graph?
 15 **A. The graph, yes.**
 16 Q. Which is on the next page, CL 525?
 17 **A. I don't have a Bates stamp on mine, so I don't**
 18 **know.**
 19 Q. But it is a graph titled "Creedon Controls
 20 Actual and Projected"?

21 **A. Correct.**
 22 Q. Okay. Now let's look at the table, okay, which
 23 is CL 524.
 24 **A. Okay.**

58 (Pages 226 to 229)

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1 Q. Now at the table, not the chart. 524. We're
2 not looking at the same thing.
3 **A. Oh, sorry, yes.**
4 Q. Okay. There is a column in about the middle of
5 the page titled "Percentage complete." Do you see
6 that?
7 **A. Yes.**
8 Q. Do you know what that percentage complete is
9 based on?
10 **A. No, I don't.**
11 Q. Do you know who prepared this table?
12 **A. No, I don't. Well, I know Kristin did a**
13 **portion of it.**
14 Q. Do you know what data she relied on?
15 **A. I believe she relied on the total hours from**
16 **payroll records.**
17 Q. So this is based on hours rather than dollars
18 billed or on a record from Mr. Doble or any of the
19 general foremen as to work actually accomplished?
20 **A. Correct.**
21 Q. Okay. The column immediately to the left of
22 the percentage complete is "S curve percentage," do
23 you see that?
24 **A. I do.**

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1 that compared daily hours. Is this the graph you had
2 in mind or did you have other graphs in mind?
3 **A. I did not have -- this is -- yes, this is the**
4 **graph that I was talking about.**
5 Q. Was this graph prepared several times or was
6 this a one-time preparation?
7 **A. This was several times.**
8 Q. Do you know when you gave this document to
9 Wilmington Trust?
10 **A. No, I do not.**
11 Q. If you look --
12 **A. I can probably check out, but I don't know off**
13 **the top of my head.**
14 Q. Well, I understand. But I just, I want to know
15 what you know now.
16 **A. Okay.**
17 Q. Okay. Would you look at the narrative portion
18 of this CO 0530. Do you know who prepared this
19 narrative?
20 **A. Yes, Dennis Link.**
21 Q. Dennis Link prepared this?
22 **A. Yes.**
23 Q. Do you know what documents or other information
24 Mr. Link worked from?

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1 Q. Do you know what S curve is?
2 **A. I do know there is another graph called the "S**
3 **curve," and that these would have fed the S curve**
4 **graph.**
5 Q. Do you know what the S curve is supposed to
6 represent?
7 **A. The variation of the variant.**
8 Q. Do you know under whose direction Miss Cerase
9 worked in preparing this table and gathering this
10 data?
11 **A. That would have been Mr. Link.**
12 Q. Mr. Link, okay.
13 **A. Yes.**
14 Q. Given that the total in the third column under
15 "total hours" matches to the "project to date" hours
16 on CL 524 --
17 **A. Yes.**
18 Q. -- would it be reasonable to say that this
19 table and the bar chart are contemporaneous?
20 **A. It would be reasonable, yes.**
21 Q. Okay. Now, the next page that doesn't have a
22 Bates on it is the graph?
23 **A. Yes.**
24 Q. You talked a little bit ago about doing graphs

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1 **A. He worked from the project documents, he worked**
2 **extensively with Charlie Doble, he worked with project**
3 **manager -- the site supervision, the manpower**
4 **supervision, and he worked from -- well let me see how**
5 **far it goes. And of course I reviewed it.**
6 Q. Did you review it for the accuracy of the
7 statements?
8 **A. For the reasonableness and accuracy, yes.**
9 Q. Okay. If you go back to the table with me on
10 CL 0524, there's a column headed "total hours."
11 **A. Yes.**
12 Q. Is it your understanding that those are the
13 total hours actually spent in that particular week?
14 **A. Except for a formatting problem, yes.**
15 Q. When you say "a formatting problem," what do
16 you mean?
17 **A. Well, there was some time period in here where**
18 **the total number at the bottom wasn't all the cells in**
19 **the, in the Excel spreadsheet. So, but I believe that**
20 **these numbers by week were --**
21 Q. Were correct?
22 **A. Were correct, yes.**
23 Q. Okay. And on the right-hand side of the table,
24 there's a set of columns labeled "projected." And

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CREEDON CONTROLS, INC., a)
Delaware corporation,)
)
)
Plaintiff,)
) Civil Action
v.) No. 05-CV-300-JJF
)
)
BANC ONE BUILDING)
CORPORATION, an Illinois)
corporation, and FOREST) Volume Two
ELECTRIC CORPORATION, a New) Pages 244 - 397
York corporation,)
)
Defendant.)

Videotape Rule 30(b)(6) deposition of
CREEDON CONTROLS, by and through PATRICIA CREEDON,
taken pursuant to notice at the law offices of Ashby &
Geddes, P.A., 222 Delaware Avenue, 17th Floor,
Wilmington, Delaware, beginning at 9:33 a.m., on
Tuesday, May 23, 2006, before Julie H. Parrack,
Registered Merit Reporter, Certified Realtime Reporter
and Notary Public.

APPEARANCES:

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1 **A. We had made four contacts prior -- after the**
 2 **July 8th meeting, and at the fourth one it was, "Do**
 3 **what you have to do."**

4 Q. Did you, you personally on behalf of Creedon
 5 Controls subsequently write, for example, to
 6 Mr. Diamond at Banc One or to Mr. Tishman at Tishman
 7 Construction --

8 **A. Correct.**

9 Q. -- seeking to get a meeting?

10 **A. Correct.**

11 Q. As a result of those letters did you have a
 12 subsequent meeting?

13 **A. We did.**

14 MR. PATRIZIA: Counsel, I would like to
 15 ask you whether you regard those conversations as
 16 within the settlement privilege, that is, the ones
 17 that occur subsequently that Mr. Hennessey and Miss
 18 Creedon and others attended?

19 MR. SEGLIAS: I think you're -- at this
 20 point, we'll reserve our right. I mean at -- if we
 21 believe that -- I'll allow you to explore it. If we
 22 believe that it may violate the Federal Rules for
 23 purposes of trial, that's probably a different story
 24 and I'll reserve my right to object to any sort of

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1 record at approximately 10:16 a.m.

2 BY MR. PATRIZIA:

3 Q. Looking still at Exhibit 41, Miss Creedon,
 4 would you turn to the page which is Bates stamped CL
 5 0620? Do you know who prepared this portion of
 6 Exhibit 41, the Section IV, contract summary text?

7 **A. It would have been Dennis Link with input from**
 8 **Charlie Doble, myself.**

9 Q. Did you review it prior to its inclusion in
 10 Exhibit 41 and its being sent to the bank?

11 **A. Yes.**

12 Q. In the bottom third of that page, there is a
 13 reference to a letter of intent for the IT cable
 14 conveyance system dated February 6th, 2004. Do you
 15 see that?

16 **A. I do.**

17 Q. If you look further back in the document at
 18 page CL 0638, there's a copy of what I believe to be
 19 that letter. Is that correct?

20 **A. It looks like it, yes. Um-hum.**

21 Q. And would you agree with me that the form and
 22 the text of that letter is substantially the same as
 23 the letters that you received in October and November
 24 of '03 with regard to the 6B project?

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1 settlement discussions, if you will, that may have
 2 occurred.

3 But for purposes of this deposition, I'm
 4 going to allow you to go ahead and explore that.

5 MR. PATRIZIA: I think I understand the
 6 line you're drawing.

7 BY MR. PATRIZIA:

8 Q. With that in mind, Ms. Creedon, were there
 9 subsequent meetings by Creedon Controls with
 10 representatives of Forest Electric and/or Tishman
 11 Construction and/or Banc One Building Corporation?

12 **A. Everyone but Tishman, yes.**

13 Q. Did you ever have a meeting at which Tishman
 14 Construction was separately represented?

15 **A. Following the July 8th meeting?**

16 Q. Yes.

17 **A. No.**

18 THE WITNESS: May I take a break now?

19 MR. PATRIZIA: Yeah, of course.

20 THE WITNESS: Thank you.

21 THE VIDEOGRAPHER: We're going off the
 22 record at approximately 10:09 a.m.

23 (A brief recess was taken.)

24 THE VIDEOGRAPHER: We're going back on the

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1 **A. I would.**

2 Q. There is no Exhibit 1 attached to this copy of
 3 the letter. Do you know whether Exhibit 1 on this
 4 letter was the same form of subcontract agreement that
 5 you had received in October and November?

6 **A. My recollection was that it was.**

7 Q. When you received this letter with the same
 8 form of agreement, did you raise again with Forest
 9 Electric the issue of obtaining a written contract in
 10 executable form for the 6B work as well as the 21B
 11 work?

12 **A. I don't recall.**

13 Q. Two pages after that letter at 0640 there is a
 14 document titled "Purchase order agreement." Do you
 15 see that?

16 **A. I do.**

17 Q. Is this the purchase order that you received
 18 from Forest with regard to the 21B work?

19 **A. This would be a purchase order for my job 2377.**

20 Q. Well, if you look at the total amount at the
 21 bottom --

22 **A. Oh, sorry.**

23 Q. -- and compare it to the February 6 letter, the
 24 amounts seem to match and the text is "add IT cable

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1 conveyance system" --
 2 **A. You're right, yes.**
 3 Q. -- "pod A per RFP 21B"?
 4 **A. Yes.**
 5 Q. So this is the purchase order from Forest for
 6 the 21B work?
 7 **A. Yes.**
 8 Q. Did you receive a similar purchase order for
 9 the 6, project 6B work?
 10 **A. Not that I recall.**
 11 Q. Did you find it unusual that there was a
 12 purchase order for this work and not for the 6B work?
 13 **A. No, I did not. Didn't give it much thought.**
 14 Q. Turning back to page CL 0620.
 15 **A. Yes.**
 16 Q. There is a reference at the bottom of that page
 17 to the May exchange with, which included a different
 18 form of contract. Do you see that?
 19 **A. I do.**
 20 Q. The last sentence says, "This action by FEC,
 21 Tishman and Banc One created confusion with whom we
 22 have even an oral contract." Do you see that?
 23 **A. I do.**
 24 Q. In the transmission of the contract form in

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1 Q. And not from anyone else?
 2 **A. No, I did not.**
 3 Q. And you say in this sentence at the bottom of
 4 0620 that it "created confusion regarding with whom we
 5 have even an oral contract." Do you see that?
 6 **A. I did not say that, but I can read it, yes.**
 7 Q. When you say you did not see it, this was
 8 something that Creedon Controls submitted?
 9 **A. I did not say that, right. I'm just saying
 10 that's not my terminology.**
 11 Q. Whose terminology is that?
 12 **A. I believe that's Dennis Link's terminology.**
 13 Q. Was it Creedon Controls' understanding in
 14 embarking on the work in October of 2003 that they
 15 were undertaking, Creedon Controls was undertaking
 16 that work pursuant to a contract?
 17 **A. Yes.**
 18 Q. Is it Creedon Controls' understanding that the
 19 contract was not reduced to an executed written
 20 contract?
 21 **A. No, I was waiting for an executed contract. At
 22 no time did I think I wouldn't get a contract.**
 23 Q. Indeed, Creedon Controls commenced the work
 24 believing that it was working pursuant to a contract,

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1 May, did you receive any correspondence directly from
 2 Tishman Construction?
 3 **A. No, we did not.**
 4 Q. Did you receive any correspondence in that time
 5 frame directly from Banc One Building Corporation?
 6 **A. Other than the contract, no.**
 7 Q. Well, did the contract come to you from Banc
 8 One Building Corporation or from Forest Electric?
 9 **A. My assumption was that it came from Banc One to
 10 Forest to me; thereby it did come from Banc One.**
 11 Q. What was the basis of your assumption that it
 12 came from Banc One to Forest?
 13 **A. It was -- I believed it to be a contract
 14 prepared by Banc One.**
 15 Q. But you only received it from Forest Electric?
 16 **A. That would not have surprised me.**
 17 Q. I didn't ask you whether you were surprised,
 18 Miss Creedon. But you only received it from Forest
 19 Electric?
 20 **A. And where would they have gotten it from?**
 21 Q. Miss Creedon, regardless of where you think
 22 they got it from, did you receive it from Forest
 23 Electric?
 24 **A. I received it from Forest Electric.**

1 isn't that right?
 2 **A. I anticipated a contract.**
 3 Q. Well, when you say you anticipated a contract,
 4 you anticipated a written contract --
 5 **A. I did.**
 6 Q. -- in fully executable form?
 7 **A. Yes, an executable contract.**
 8 Q. But you wouldn't have undertaken the work
 9 unless you believed that you had a contract under
 10 which you would be paid to perform that work; isn't
 11 that right?
 12 **A. Correct.**
 13 Q. At the time that Creedon Controls began the
 14 process of submitting its change orders for the claim
 15 which is involved in this proceeding, were you told
 16 that there was a combined overhead and profit limit to
 17 which Creedon Controls should adhere in making its
 18 submission?
 19 **A. There were varying tellings or papers exchanged
 20 about what would or would not be the overhead and
 21 project profit on the project.**
 22 Q. What was, what was your understanding of what
 23 Forest believed was the appropriate limit?
 24 **A. I cannot recall which one they finally decided**

9 (Pages 273 to 276)

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<p style="text-align: right;">Page 277</p> <p>1 upon.</p> <p>2 MR. PATRIZIA: Would you mark this as 42, 3 please?</p> <p>4 (Creedon Exhibit No. 42 was marked for 5 identification.)</p> <p>6 Q. Showing you Creedon 42, which is Forest 7 Electric's 3457, this appears to be an e-mail from a 8 Juliane Lynch to Mr. Doble. Have you seen this e-mail 9 before, Miss Creedon?</p> <p>10 A. I can't answer with any certainty.</p> <p>11 Q. Did Mr. Doble ever have a discussion with you 12 that payroll processing fees are an overhead to be 13 included in the labor rate?</p> <p>14 A. I believe we resolved this issue, and it was 15 allowed.</p> <p>16 Q. Do you see where the combined overhead and 17 profit should be limited to an agreed guideline of 15 18 percent?</p> <p>19 A. I do see that.</p> <p>20 Q. Was that your understanding as to what Forest 21 expected in any submission?</p> <p>22 A. I can't answer that with any certainty.</p> <p>23 MR. PATRIZIA: Would you mark this as 43, 24 please?</p>	<p style="text-align: right;">Page 279</p> <p>1 A. The critical events summary were change orders, 2 87 individual price change orders. And for expedience 3 sake, we referred to them as critical events or change 4 orders. And I believe there were 87 through April 5 8th, and we priced each one separately and billed the 6 total on the May billing.</p> <p>7 Q. Okay. So --</p> <p>8 A. Or included it in the pencil copy on the May 9 billing.</p> <p>10 Q. So when the initial pencil requisition was 11 submitted by Creedon to Forest for the May 12 requisition, included on the pencil copy of the 13 requisition was an amount for 87 separate proposed 14 change orders, and each of those events was an event 15 listed on the critical event summary; is that correct?</p> <p>16 A. That sounds right.</p> <p>17 Q. Okay. Let me show you a document which we'll 18 mark as 44.</p> <p>19 (Creedon Exhibit No. 44 was marked for 20 identification.)</p> <p>21 A. I might add that it was without profit and 22 overhead, only at cost.</p> <p>23 Q. Showing you Creedon 44, which is a document 24 Bates stamped beginning with Banc One 0048. Is that</p>
<p style="text-align: right;">Page 278</p> <p>1 (Creedon Exhibit No. 43 was marked for 2 identification.)</p> <p>3 Q. Creedon 43 is an e-mail from you, Ms. Creedon, 4 to Mr. Angaramo in April -- I'm sorry, in May?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Would you tell me what you recall about the 7 circumstances that caused you to send that e-mail?</p> <p>8 A. I think I was giving Paul a heads-up that the 9 critical events summary as presented would be included 10 on the May's application for payment.</p> <p>11 Q. When you say "the critical events summary would 12 be included on the May application for payment," what 13 does that mean?</p> <p>14 A. That we had been pricing the critical events 15 summary, that we had finally gotten the total hours 16 projected or estimated, and that we would then put it 17 on the May's application for payment.</p> <p>18 Q. Okay, when you say "put it on the May 19 application for payment," was the intent to include 20 the critical events summary in the May requisition or 21 was it to include the pricing that Mr. Link and 22 Mr. Doble had estimated based on the critical events 23 summary and put that dollar figure on to the pay 24 application?</p>	<p style="text-align: right;">Page 280</p> <p>1 the critical events summary as of May 24, 2004 that 2 was referenced in the e-mail that we just looked at at 3 Creedon 43 and which Mr. Doble supplied to Forest 4 Electric?</p> <p>5 A. I believe it is.</p> <p>6 Q. Did you review that document before it was 7 submitted to Forest Electric?</p> <p>8 A. I did look at it, yes.</p> <p>9 Q. Do you know whether it was prepared on the same 10 basis that you and I discussed with regard to the 11 large table, Exhibit II.F, in Exhibit 41?</p> <p>12 A. I believe it's, II.F may be reduced in size.</p> <p>13 Q. So as far as you know, once the critical events 14 summary was priced as of May 24, those prices did not 15 change in any subsequent iteration?</p> <p>16 A. No, I believe that they did change in 17 subsequent iterations.</p> <p>18 Q. So let me go back. As far as you know, the 19 methodology used by Mr. Link and Mr. Doble in creating 20 the pricing on the critical events summary which is in 21 Creedon 44 is the same methodology that you described 22 earlier?</p> <p>23 A. I believe so.</p> <p>24 MR. PATRIZIA: Would you mark that as 45,</p>

10 (Pages 277 to 280)

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1 please.

2 (Creedon Exhibit No. 45 was marked for
3 identification.)4 Q. Showing you a document which has been marked as
5 Creedon 45. This is apparently a letter from you to
6 Mr. Angarame dated May 28th, Bates stamped CL 1134 to
7 1137. Do you recall that letter?

8 A. I do.

9 Q. There's a reference in that letter to a meeting
10 or a telephone call, I'm sorry, between you and
11 Mr. Angarame?

12 A. Yes.

13 Q. What occurred in that telephone call?

14 A. We talked about the change orders submitted to
15 be included on the May payment. We talked about
16 trying to resolve the events of the change orders and
17 to mitigate further damages going forward. We -- of
18 particular note was that Forest was threatening to
19 withhold payments from March unless I signed the
20 document and return it immediately. That's --

21 Q. You say signed what document, I'm sorry?

22 A. Sign the Banc One contract and return it. I
23 believe it was that phone conversation where I had
24 said that it -- it may have been that phone

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1 Q. If you look at page CL 1136 in Exhibit 44.

2 A. Yes.

3 Q. At the first full paragraph in that document it
4 says, "As you know at bid time we indicated in writing
5 that we took exception to the sample contract
6 presented and would need to negotiate changes." Do
7 you see that?

8 A. Yes.

9 Q. What is the reference that you have to
10 indicating in writing that you took exception to the
11 sample contract presented?12 A. I believe I was referring to the annotation on
13 the letter of intent.14 Q. The two lines that says that this will be
15 effective 14 days after whatever the text is?16 MR. SEGLIAS: Well, object to that
17 characterization.18 MR. PATRIZIA: It's a fair objection,
19 Counsel, I understand. I'm just trying to get the
20 reference to the lines.21 MR. SEGLIAS: Yeah, sure. I know what
22 you're referring to.23 MR. PATRIZIA: Well, I just want the
24 witness to be sure that we're referring to the same1 conversation where I asked that I have more time in
2 order to review the contract, and that pretty much
3 sums up, sums it up.4 Q. Did you receive a reply from Mr. Angarame with
5 regard to that letter?

6 A. I believe I received a phone conversation.

7 Q. What did Mr. Angarame say in the phone
8 conversation?9 A. That he had signed the same contract that I was
10 presented with, and that I should go ahead and just
11 sign it. That they would give me more time to
12 negotiate or review the contract, and that they would
13 not withhold the payment from March. That's all I can
14 recall at that time -- at this time.

15 Q. Did you subsequently sign the contract?

16 A. I believe I made an addendum to the contract
17 and accompanied it with a letter saying that I was
18 prepared to sign the contract at some time after the
19 addendum had been reviewed and negotiated.20 Q. Did you subsequently receive the payment for
21 March?

22 A. Yes, I did, for March, yes.

23 Q. And when was that received?

24 A. Sometime in June.

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1 thing.

2 BY MR. PATRIZIA:

3 Q. Is that correct, it's that two-line reference
4 above your signature on at least some copies of the
5 October letter?

6 A. I believe that's what the reference is to.

7 Q. And then the May 28 letter at 1136 goes on and
8 says, "Let me say that for reasons we may attribute to
9 the subject project, we never had our meetings to
10 finalize our written agreement and have mutually
11 agreed to proceed under essentially an oral
12 agreement." Do you see that?

13 A. I do.

14 Q. Was it your understanding at least as of May
15 28th, 2004 that Creedon Controls was proceeding under
16 an oral agreement?17 A. No. I think I should have said "and had
18 mutually agreed to proceed under essentially an oral
19 agreement."20 Q. Well, I'm going to have to parse that. You
21 think you should have said "and had mutually agreed to
22 proceed under essentially an oral agreement." Does
23 that mean that it was your understanding as of May 28
24 that Creedon Controls and Forest Electric had agreed

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1 **two. That would not have been unusual.**
 2 Q. And beyond that, did you have any involvement
 3 in that change order process?
 4 **A. Not to my recollection, no.**
 5 Q. Could you look at Exhibit 16, please.
 6 **A. I may have to get up to do that. I have**
 7 **Exhibit 16.**
 8 Q. Okay, thank you. The -- it's first a letter
 9 from Donald Lucas at Forest to you dated May 4, 2004,
 10 and encloses the single project construction service
 11 agreement. Is that correct?
 12 **A. That is correct, yes.**
 13 Q. And that's for contract No. 6B?
 14 **A. Correct.**
 15 Q. And this is the contract that you received
 16 obviously sometime in May 2004 for your review?
 17 **A. Correct.**
 18 Q. Is it your understanding that other contractors
 19 on the Banc One project signed this agreement?
 20 **A. That is my understanding, yes.**
 21 Q. Is it your understanding that other electrical
 22 contractors executed this agreement?
 23 **A. That was my understanding, yes.**
 24 Q. Now you were asked some questions about when

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1 of intent; is that correct?
 2 **A. That is correct.**
 3 Q. And it attaches a subcontract agreement. Is
 4 that correct?
 5 **A. Yes, it does, yes.**
 6 Q. And in the letter at page CL 1143, it states in
 7 the second paragraph that subcontractor agrees to be
 8 bound to the terms and conditions of the subcontract
 9 agreement as attached hereto as Exhibit 1. Is that
 10 correct?
 11 **A. That does, yes.**
 12 Q. And obviously you signed that agreement?
 13 **A. Obviously.**
 14 Q. And you signed a later agreement which changed
 15 the amount of this 6B contract?
 16 **A. I did.**
 17 Q. And that enclosed the same subcontract
 18 agreement?
 19 **A. Same sample subcontract agreement.**
 20 Q. And in addition, on the 21B project you signed
 21 a similar letter of intent with a subcontract
 22 agreement?
 23 **A. A sample subcontract agreement, yes.**
 24 Q. You say sample. Does it say sample on the

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1 Forest Electric entered into a contract with Banc One
 2 or Tishman. Do you have any personal knowledge as to
 3 when that occurred?
 4 **A. No, I do not.**
 5 Q. Do you know if any of the other contractors who
 6 executed this agreement attached as Exhibit 16 made
 7 any or proposed any changes that were made to the
 8 contract?
 9 **A. No, none at all.**
 10 Q. And on page 006116, that's the signature page,
 11 and does that identify Forest Electric as Banc One's
 12 agent?
 13 **A. It does.**
 14 Q. And as the electrical trade manager?
 15 **A. It does.**
 16 Q. Okay, you can put that aside.
 17 Now, did you receive a similar agreement
 18 to -- agreement, single project agreement for the 21B
 19 project?
 20 **A. Yes, I believe I did.**
 21 Q. Could you please get Exhibit 11 for me?
 22 **A. I have Exhibit 11.**
 23 Q. Thank you. The -- this is the Forest Electric
 24 letter to you dated October 2, 2003 called the letter

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1 subcontract agreement that you have?
 2 **A. I believe at some point there was "sample" on**
 3 **this. I'm not sure if my copy doesn't have "sample"**
 4 **on it. I'm not sure.**
 5 Q. And whether it says sample or not, the letter
 6 clearly states that you agreed to be bound to the
 7 terms and conditions of the subcontract agreement; is
 8 that correct?
 9 MR. SEGLIAS: I'll object to the form of
 10 the question. The cover letter states what it states.
 11 And Miss Creedon has already testified to this, and
 12 she's already testified to the additional information
 13 that she's included on the letter and what she
 14 believes it all means.
 15 Q. Now, Miss Creedon, I want to give you Creedon
 16 Exhibit No. 68.
 17 MR. BRADLEY: Now for the record, I'll
 18 accept counsel's representation that she testified to
 19 the precise question I asked. If she hasn't, after
 20 reviewing a day and a half of the transcript, then
 21 I'll ask her to come back.
 22 Q. Ma'am, I've handed you Exhibit No. 68. Is this
 23 the bid form agreement that was completed for the 21A
 24 contract cable conveyance system?



In the Matter Of:

Creedon Controls, Inc.

v.

Banc One Building Corporation

C.A. # 05-CV-300-JJF

Transcript of:

Dennis Link

May 31, 2006

Wilcox & Fetzer, Ltd.
Phone: 302-655-0477
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B-0551

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Banc One Building Corporation

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1 tradesmen, there are laborers.
 2 Q. All right, well let's exclude the laborers and
 3 let's do it from the standpoint of starting with the
 4 field supervision on up and different levels that I
 5 think you just explained in terms of different
 6 management levels. Are you familiar with the numbers
 7 in those particular, I guess the definitions or the
 8 defined kind of categories we've just talked about?
 9 **A. Well, it varies over time. But I would say**
 10 **that in the March period of '04, and this is pretty**
 11 **much a guess but I think an intelligent guess, there**
 12 **was two general foremen that I recall, and I would say**
 13 **there were three or four foremen. And I think there**
 14 **may have been a material person and myself and Charlie**
 15 **Doble.**
 16 Q. Is this the largest job or project to your
 17 knowledge that Creedon Controls has undertaken?
 18 **A. I really don't know all the projects that**
 19 **Creedon Control has done. I would say as far as**
 20 **Charlie Doble was concerned, he's done projects much**
 21 **larger than this.**
 22 Q. If Mr. Doble's done projects much larger than
 23 this, to your knowledge has he had similar issues on
 24 the larger projects?

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1 **during the course of working together. Many, many**
 2 **hours we spent together. And he, he did not**
 3 **experience the kind of problems on a project of this**
 4 **size on any other projects, and neither did I.**
 5 Q. Now, to your knowledge has Mr. Doble ever had
 6 anyone I guess else other than yourself on a project
 7 fill in or provide assistance as you were going to do
 8 or were talking to him about doing in March of 2004 on
 9 this project?
 10 **A. I can't remember specifically whether he did or**
 11 **he didn't.**
 12 Q. Okay. To your knowledge, did any other
 13 contractors on the site of this project have I guess
 14 somebody who would be considered your peer or someone
 15 who was also providing assistance to the other
 16 contractors?
 17 **A. I don't recall.**
 18 Q. Did you at any time have an impression that
 19 there were parts of this job that were too big for
 20 Creedon?
 21 **A. Fundamentally, a project, the definition of too**
 22 **large or too small is a function of the project**
 23 **management that you have on the project. It's not**
 24 **really a function of the company that you're working**

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1 MR. SEGLIAS: I'd just caution the
 2 witness. You don't have to speculate or guess. If
 3 Charlie has specifically told you something, then that
 4 would be fair game and appropriate to respond to. But
 5 you're not, not required here to guess at whether he
 6 may or may not have.
 7 Q. Which is why I said to your knowledge.
 8 **A. Yes, I do have knowledge. This particular**
 9 **project, I have 36 years of experience in**
 10 **construction, and I've never seen anything the way**
 11 **this project was run and managed in my whole career.**
 12 **And, and Charlie's experience was similar. This was**
 13 **not a very well-managed project.**
 14 Q. But to your knowledge, has Mr. Doble
 15 experienced similar problems on other projects?
 16 **A. Nothing like this to my knowledge and my**
 17 **discussions with Charlie Doble.**
 18 Q. When you say "nothing like this," are you
 19 saying that you're not familiar with any problems he's
 20 had on other projects, or are you just saying compared
 21 to this project?
 22 **A. I think your question was compared to this**
 23 **project did he experience the same kind of problems.**
 24 **And the answer is we discussed a lot of projects**

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1 **for, largely.**
 2 **And in this particular case, Charlie**
 3 **Doble, his experience was more than what was necessary**
 4 **for this project. So the project was well managed,**
 5 **and Charlie Doble's experience was, he's, he is one of**
 6 **the best project managers that I've ever experienced**
 7 **in my career.**
 8 Q. But in terms of the administrative tasks you're
 9 talking about, what aspect of that, if any, was
 10 impacted by what you're describing as the overall
 11 management beyond Creedon?
 12 **A. Paul, can you try that again?**
 13 Q. Okay. I guess what I'm trying to get at is, is
 14 it seems that you're saying, and again if I'm
 15 incorrect, let me know. It seems that you're saying
 16 that there -- that the issues were exterior to
 17 Creedon. Is that what you're saying?
 18 **A. Yes. In terms of the problems that were**
 19 **experienced on the project, they were exterior to**
 20 **Creedon.**
 21 Q. But the reason why you were brought in, at
 22 least what you've told me so far, is to help with the
 23 administrative aspects within Creedon. Is that fair
 24 to say?

5 (Pages 14 to 17)

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1 A. That's fair.
2 Q. Okay. And so what I'm trying to get at is what
3 is it about the administrative aspects within Creedon,
4 why is it that Charlie Doble needed assistance on
5 those aspects and how does that -- that's one
6 question, and then the second one will be how does
7 that relate to the problems you say are exterior to
8 Creedon? So I just gave you a preview where I'm
9 going.
10 A. Before you do a project, you have the
11 opportunity to review bid documents. And based on
12 those bid documents, you present -- you put together
13 your estimate and you anticipate that the project will
14 be conducted in a manner which is reflected by those
15 bid documents.
16 Had the project been conducted in the
17 manner that was reflected by the bid documents and the
18 basis of Creedon's bid, it is my opinion that Charlie
19 Doble would have had no problem at all, and I would
20 not have been required.
21 However, during the course of the project,
22 the project unfolded much, much differently than what
23 was presented in the bid documents and was pretty much
24 represented at the time that Creedon put together

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1 A. The more difficulties you're experiencing on
2 the site itself, the more activity, the, the greater
3 number of memos that have to be written, the greater
4 number of letters that have to be written, more notes
5 that have to be taken, more time the project manager
6 has to spend in the field resolving difficulties, and
7 then documenting those difficulties, the more time he
8 has to spend interfacing with other trades, the amount
9 of time that he has to interface with, say, Forest or
10 Tishman people. That is where the escalation is.
11 It's tremendously time-consuming.
12 Q. So how would you compare the time that
13 Mr. Doble was spending on those tasks prior to your,
14 let me use I guess the term joining their team to the
15 time that you spent on it after you started in that
16 role for Creedon?
17 A. It became more and more difficult. In other
18 words, when, when I arrived on the project in, say,
19 March, the level of Charlie's activity and these
20 time-consuming activities that we just discussed
21 escalated even more. And so that even with the two of
22 us on the project, we frequently stayed till 1, 2:00
23 in the morning when initially it wasn't necessary for
24 us to do that.

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1 their bid.
2 Now, that has many, many implications, but
3 I think it's a good answer to your question.
4 Q. Now, in terms of the things I think you
5 mentioned, the administrative tasks, and again, I'm
6 going to, if I'm incorrect let me know, but I believe
7 you mentioned things like daily reports, interacting
8 with, interfacing with Forest, other management on
9 site, communicating with other contractors. How is it
10 that any problems, the problems you just described
11 regarding the bid process, how is it that that impacts
12 those types of tasks?
13 A. The, the tasks have to -- the tasks that you
14 describe there have to be performed in either project.
15 The question is what's the volume that has to be, in
16 other words, how many pages of notes and so forth have
17 to be prepared. The activities that are taking place
18 on the project which, which are different than what
19 was represented at bid time escalates the amount of
20 activity that's necessary in the areas that you just
21 described.
22 Q. And when you say escalates, so are we talking
23 about more meetings or are we talking about more notes
24 or how does it escalate?

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1 Q. And just to be clear, what I really want to get
2 at is the issues of, the administrative issues of
3 communicating, interfacing, daily reports. What I
4 really want to get at is the amount of time that
5 Mr. Doble was spending doing those tasks prior to your
6 joining the team, versus the amount of time that you
7 were doing on those tasks after you joined the team.
8 MR. SEGLIAS: In terms of hours, Paul, or
9 in terms of percentage of his overall activity?
10 MR. McDONALD: Hours is a place -- that's
11 what I had in mind. But we can talk about percentage
12 of overall activity after we talk about hours.
13 MR. SEGLIAS: And that would be based on
14 your own personal knowledge then, Dennis. Do you know
15 how many hours he spent on a weekly basis or a daily
16 basis typically handling administrative issues?
17 THE WITNESS: I can guess based on the
18 general discussions that we had, but I can't give you
19 what I consider to be a reliable, accurate estimate of
20 his activities prior to March.
21 Q. Well how much time were you spending on those
22 tasks after you started working on the team?
23 A. I was spending, I was there two to three days a
24 week, and, and arriving maybe 8 or 9 in the morning

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1 and continuing frequently to 10, 11, 12, 1, 2:00 in
2 the morning.

3 Q. And could you give me I guess a general
4 description? I know it might take a little while to
5 do this, but a general description of what a typical
6 day for you would be like from 8 to 11 or 1, as it is?
7 What was your -- what was a typical day for you on
8 site like?

9 A. I don't know that I could describe a typical
10 day. I could describe something, but every day was
11 completely different. I was impacted by things that
12 were going on on the job site. And depending upon
13 what was going on on a particular day, it could affect
14 what I was doing.

15 But I can tell you that I was involved in
16 the activities surrounding the daily logs. I had
17 numerous discussions with foremen and general foremen.
18 I was involved with the scheduling. I was involved
19 with e-mail responses, reviewing e-mails from Forest,
20 Tishman, whoever might be generating those. It's,
21 it's difficult to describe a typical day, but all of
22 those things would be involved.

23 Q. To your knowledge, prior to your joining the
24 team, were those things being done?

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1 outside of that area so that those areas could be kept
2 wide open. And the only activity that you would
3 normally have is the material, tools, equipment, and
4 the various trade personnel that were working in
5 various areas within, let me call it the four walls of
6 the building.

7 What happened in late December was it was
8 decided that all of the material that was being stored
9 in trailers outside the four walls would be removed
10 from the site, and all of the material, equipment and
11 the logistical items necessary to run the project for
12 all trades was moved in within the four walls. And so
13 at that point what happened was there was a lot more
14 problems that were experienced that weren't
15 experienced prior to that time.

16 Now, to respond to your question as to
17 when they should have known or what discussions we had
18 relative to when they did know, fundamentally it's my
19 recollection that activities post Christmas of
20 December 2003 were the problem areas. And although
21 there may have been some recognition in January, it
22 wasn't until the dates that the union reports were due
23 and the total payrolls were put together for the month
24 of January reporting that, so like mid-February to the

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1 A. Yes.

2 Q. And who were they being done by?

3 A. Largely Charlie Doble.

4 Q. You say largely, who else was involved?

5 A. Well, Pat Creedon would be helping, Kristin
6 Cerase, who was a person in the office, she would help
7 Charlie with administrative activities. There were
8 people such as the warehousemen and the truck drivers
9 that would also assist to the extent they could on
10 purchases and things like that.

11 Q. And did you ever have a discussion with either
12 Miss Creedon or Mr. Doble about why they didn't bring
13 someone on sooner than bringing you on in March 2004?

14 A. My recollection is that the problems
15 didn't really begin to escalate until late, maybe
16 around Christmas of 2003, when it was decided to work
17 on the parking lot area, the foundations for building,
18 I want to call it drawing H, which was the
19 administration building, and other activities related
20 in that particular area. What they, what -- at that
21 time, what's typical on projects such as this is you
22 have off location -- well let me say it this way.

23 The building site itself, say within the
24 foundation of the building, normally there was storage

1 end of February would have been the first time that
2 they could actually see in a very analytic way what
3 the impact of moving all of the tools and equipment
4 and the personnel changing areas and lunch areas and
5 things like that inside the building.

6 So my recollection is that middle, the end
7 of February that they, they pretty much began to
8 recognize they had a problem, and they called me in a
9 couple weeks after that.

10 Q. Okay. Now, is it your understanding that prior
11 to that parking lot project and the moving of
12 materials inside that they didn't have any problems
13 that were unusual or they felt like were of note?

14 A. My recollection is, is that RFIs, requests for
15 information, which are needed for you to continue to
16 proceed with your work, were being generated by
17 Creedon and not being responded to by Forest, Tishman,
18 the related engineers and architects on the project.

19 And in addition to that, proposed change
20 orders were not being acknowledged on a timely basis.
21 And these are paperwork-type items that Creedon was
22 generating routinely, and they were getting very poor
23 turnaround with respect to responses there, which was
24 delaying their activities even early in the project in

7 (Pages 22 to 25)

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1 the October, November and early December period of
2 '03.

3 Q. Now, I'll get to that, get back to that in a
4 second. But I guess my question is prior to the
5 parking lot issue in December and the moving of the
6 materials then, was it your understanding that
7 Mr. Doble or Miss Creedon, that they felt like that
8 they didn't need assistance in the form that they
9 later requested of you?

10 A. If it were I, based upon what I knew then and
11 know now, I typically would have staffed the job
12 administratively, and as far as the trades are
13 concerned, pretty much in accordance with the estimate
14 that I had put together in order to get the job based
15 on what was represented by the bid documents. And at
16 that time my experience is, and my knowledge of what
17 took place, I don't think I'd be looking for help. I
18 would be hoping that the turnaround on the request for
19 information, the PCOs would improve, and I would be
20 able to conduct the project in accordance with the
21 original schedule.

22 And at some point subsequently, when you
23 have a major change, like you really crowd the work
24 areas within the four walls of the building, when that

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1 of the nature of the RFIs to the proposed change
2 orders?
3 A. Typically it had to do with drawings, and there
4 may have been reasons why certain things could not be
5 done in accordance with those drawings, or there was
6 some question as to specifically what was intended
7 when you got to the point of planning the installation
8 of what was described in these drawings. And so
9 largely the request for information was related to the
10 drawings themselves or some physical aspects of the
11 work area that may have been in conflict or unclear
12 with respect to the drawings. So that would be the
13 nature of the information on the PCIs -- I mean on the
14 RFIs.

15 And with respect to the PCOs, did you ask
16 that question?

17 Q. The change orders?

18 A. Yes. With respect to the PCOs, when there were
19 deviations that were recognized, then you would
20 acknowledge those with a proposed change order, which
21 you would expect them to get back to you with so that
22 you could then move forward conducting the work in the
23 manner described in the PCOs.

24 Q. And to what extent, if any, did this, you say

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1 begins to happen, and as I said earlier, when, from an
2 analytic standpoint it's not a feel anymore, you
3 actually get to see the numbers mid-February to end of
4 February and you can start analyzing them and say we
5 have a problem, I don't know, based on my experience,
6 how they could have done -- they would have or could
7 have or I would have even done anything sooner than
8 the, the end of February, beginning of March.

9 Q. Now, you mentioned that they were having delays
10 in responses to RFIs and proposed change orders. Who
11 at Creedon was preparing RFIs and proposed change
12 orders?

13 A. Those that I looked at, and based on my
14 recollection currently without getting involved in
15 reviewing them again, was largely Charlie Doble.

16 Q. Okay. And do you have I guess a ball park or
17 maybe exact number of how many of those had been
18 prepared prior to December, or actually through the
19 end of December 2003?

20 A. I don't recall right now.

21 Q. You said you did review them, though, at some
22 point?

23 A. Oh, yes.

24 Q. And, and what were -- what's your recollection

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1 the delay in the response to the RFIs or the PCOs
2 affect Creedon's work towards, towards the completion
3 date through December 2003?
4 A. Well, not recalling what the number was, it
5 would be hard for me to even estimate what the impact
6 may have been at that time in the project.

7 Q. Was it your understanding at that time through
8 December 2003 that Creedon believed -- I say believe
9 itself, that Miss Creedon or Mr. Doble believed that
10 Creedon was on schedule to complete the project?

11 A. Prior to December of 2003, the Christmas
12 period?

13 Q. Yes.

14 MR. SEGLIAS: If you know.

15 A. Yeah, I have a faint recollection that they
16 were somewhat optimistic, that they were slipping a
17 little bit and in terms of, you know, what do we do?
18 We don't have response to request for information. We
19 have a schedule that says we should be proceeding. We
20 have proposed change orders that are not being
21 responded to, what do we do? Do we continue to move
22 people around, try to pick up work so we don't have to
23 lay off people? Or do we go ahead and we do some of
24 these things at our risk perhaps to remain on

8 (Pages 26 to 29)

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1 request for information in, "How do you want this
2 done, Mr. Engineer?" And Mr. Engineer doesn't get
3 back, and I may only have two more days in that
4 particular room before I've been asked to move out so
5 somebody else can come in and do some work there. And
6 so it's, I'm forced into a situation that I have to
7 make a decision in order to continue to stay on
8 schedule and move ahead.

9 So that again, I don't know if -- I'm
10 making things up just to be responsive to your
11 question to give you examples of how you could get
12 forced into a situation that you had to do something,
13 even though you're not getting the responses from the
14 people who should be providing those responses.

15 Q. Understood. Now, taking that from I guess the
16 general that we've been talking about for the last
17 couple minutes to the specific, what's your
18 understanding of how many instances where, and this
19 again is through the December 2003 period, through the
20 time period we've talked about before where there's
21 the parking lot issue and the moving of the materials,
22 what's your understanding of how many RFIs that were
23 not responded to that involved kind of a circumstance
24 where Creedon had to make a decision to do additional

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1 outside the four walls, the perimeter of the building.
2 And they could safely store their materials, they
3 could, they could secure them, their tools, they had
4 lunch areas and changing areas and things like that
5 outside.

6 And then what happened, as I indicated
7 earlier, was those trailers, the contractors, all the
8 contractors were told you have to get those off site,
9 we want to work in the areas where those storage and
10 secure areas -- trailers and C-boxes were stored, and
11 everything has to move inside the building.

12 So we have a situation where the area was
13 largely open and accessible to do work, to a situation
14 where that was no longer the case.

15 Q. And what's your understanding as to why that
16 decision was made to do work on the parking lot and
17 move things inside, if you have one?

18 A. Yes. The reason that that happened was that
19 the management of the project, which would include
20 Banc One, Tishman and Forest, decided for some reason
21 that they wanted to work in that area at that time.
22 And as I mentioned earlier in the deposition, that the
23 administration -- the office area, the administration
24 office area, drawing H area, and the parking lot

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1 work?

2 A. Okay, you asked me a question earlier in terms
3 of how many RFIs there were and PCOs, and I told you
4 that I couldn't, I couldn't estimate that and what the
5 implications of it are. That hasn't changed. There's
6 really -- I can't be -- other than guessing, there's
7 no way I can be responsive to that question at this
8 time.

9 Q. You say you reviewed them at some point,
10 correct?

11 A. That is correct, absolutely.

12 Q. And do you have copies of those still?

13 A. I doubt that I have copies in my files. They
14 were, they were part of the files that were on site in
15 the construction office while I was there.

16 Q. Now, in December 2003, now I'm talking about
17 after, or the period after Christmas --

18 A. Yes.

19 Q. -- after this issue arises, what's your
20 understanding of the, the things that changed that
21 made the job more difficult after that?

22 A. As I described earlier, we went from a
23 situation where each of the contractors, each of the
24 trades had storage trailers and C-boxes on site

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1 around there was the area that they wanted to work in.

2 Q. A couple things I'd like to ask regarding what
3 you just said. The first is to your knowledge, was
4 this, the work that was going to be done in the
5 parking lot, was that included in the bid materials
6 that Creedon received?

7 MR. SEGLIAS: I'm sorry, could you, could
8 you read back the question, please?

9 (The requested portion was read.)

10 A. I can't remember specifically without reviewing
11 the documents at this time. But largely that was
12 controlled by a schedule which was presented at bid
13 time. And those activities were not in accordance
14 with the schedule and what was anticipated by Creedon
15 based upon what was represented at bid time.

16 Q. Do you have a recollection, since you mentioned
17 schedule, of when this particular project, the parking
18 lot project or the -- I'll refer to it as that, that
19 incident as the parking lot issue, when it was
20 scheduled in terms of month?

21 A. As I sit here now, I don't, I don't recall.

22 Q. Did you ever have a discussion with anyone at
23 Creedon regarding what, if they had any plans to, to
24 do work during the time period that this parking lot

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1 **how we were to proceed on a given issue. And so it**
 2 **would take that form largely.**
 3 Q. And in any of those six or 12 meetings, did you
 4 ever, polite way of putting it, raise any complaint or
 5 make any complaint to Banc One regarding the
 6 management of this project?
 7 **A. No. These, these meetings were usually very**
 8 **task oriented, you know, specifically, you know, ad**
 9 **hoc to a particular problem. And there would be no**
 10 **reason to get into a discussion which was not related**
 11 **to the task at hand.**
 12 Q. Do you recall ever disagreeing with a
 13 resolution to any problem coming out of those meetings
 14 with Banc One?
 15 **A. No. I largely listened, and it was more**
 16 **Charlie's role to agree or disagree or to offer an**
 17 **alternative. Charlie and I may have conferred briefly**
 18 **on a particular issue and then Charlie would then**
 19 **present it, but largely my role was not to really**
 20 **participate, other than with the people of our team,**
 21 **the Creedon team.**
 22 Q. Do you recall any instance where Mr. Doble
 23 registered a complaint or a certain degree of
 24 disagreement with any decision being made by Banc One

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1 at any of these meetings?
 2 **A. He frequently would have alternative**
 3 **recommendations that I considered to be improvements**
 4 **over those that were being discussed.**
 5 Q. And today do you recall any specific example of
 6 one or more of those recommendations?
 7 **A. Not related to 2357, or project 6B.**
 8 Q. Let me ask you that, actually. When you --
 9 these meetings that you're having with, where Banc One
 10 is present, were any of them related to 2357?
 11 **A. They may have been. That's what I'm saying,**
 12 **you asked me if I could come up with any examples of**
 13 **discussion. As I sit here, I can't think of anything**
 14 **specifically related to 2357. But, you know, such**
 15 **things existed. I just don't have a recollection now**
 16 **of an example in response to your question.**
 17 Q. Now, going back to the December, the post
 18 Christmas time period with the parking lot issue, do
 19 you have any knowledge or understanding of how other
 20 contractors responded to what I think I can
 21 characterize as a congestion issue, is that fair to
 22 say, a congestion issue within the, within the
 23 building?
 24 **A. Congestion begins to describe the problem, yes.**

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1 Q. If you want to fill it out more, feel free to
 2 do so.
 3 **A. Well, let's, let's stay with congestion.**
 4 Q. Okay. Was there anything else that in addition
 5 to congestion that you feel would better characterize
 6 the problem as you've described it after the December
 7 Christmas time period in the building when materials
 8 were brought in? Is there another way you would
 9 describe it or add things, for that matter?
 10 **A. Yeah, the way that, what I would say is**
 11 **congestion is an issue. But being unable to do your**
 12 **work is probably, you know, maybe putting some**
 13 **additional meaning into what congestion means. You**
 14 **know, we're describing the results of what, of what I**
 15 **think you're describing congestion to mean.**
 16 Q. Okay. And do you have any knowledge or
 17 understanding of how other contractors responded to
 18 both the congestion and any issues of doing work?
 19 **A. It's a pretty general question. What**
 20 **specifically are you looking for?**
 21 Q. Well, I mean if you know of any, you know,
 22 obviously there's a response and then we'll get to
 23 that, that Creedon had one way or another to deal with
 24 this issue. And what I'm trying to get at is whether

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1 or not you have any knowledge of what other
 2 contractors may have done, or I mean not may have
 3 done, were doing, I should say, to address whatever
 4 issues that flowed from the parking lot issue?
 5 **A. It really depends upon the work that those**
 6 **contractors were doing, what their trade is. And I**
 7 **can tell you that there was things that Creedon,**
 8 **problems that Creedon had were unique to Creedon**
 9 **because of the nature of Creedon's work. And I'm**
 10 **sure, and I do have recollections of discussions of**
 11 **other contractors that had problems with respect to**
 12 **their trades.**
 13 Q. And what were the discussions you had with
 14 those other contractors? What type of problems were
 15 they telling you?
 16 **A. As you describe it, congestion. The inability**
 17 **to work in given areas because other people's tools,**
 18 **equipment, and materials were in an area that they**
 19 **needed access to.**
 20 Q. What if any response or work around or other
 21 type of fix, if you will, or attempt to fix did
 22 Creedon engage in in response to this? And when I say
 23 "this," again I'm talking about the congestion
 24 resulting from the parking lot issue in December.

14 (Pages 50 to 53)

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1 A. Frequently they complained about it in meetings
2 with Forest and asked for some kind of assistance in
3 facilitating their work; that is, enabling them to do
4 their work as was originally represented and
5 anticipated at bid time.
6 Q. And what response, if any, did they receive?
7 A. Sometimes the responses -- sometimes the
8 answers or the agreements were, seemed to be
9 responsive. And other times there may be a few
10 expletives that were delivered and you got no
11 responsive answer. And even when you got a responsive
12 answer, an agreement as to what you were going to do
13 tomorrow and the next day or what they were going to
14 do tomorrow and the next day, it never happened, or
15 virtually never happened, I guess I should say.
16 Q. When either a response did not come or it was a
17 response that Creedon disagreed with, is it your
18 understanding that -- let me ask -- well actually,
19 withdrawn.
20 Do you have an understanding as to why,
21 whenever a request that Creedon made was rejected, why
22 that rejection came?
23 A. Largely because of poor management from Forest
24 and Tishman.

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1 some accommodation, but I can't think of an
2 accommodation, as I sit here now, reflecting upon
3 2004.
4 Q. Is there anything about the nature of the work
5 that Creedon was doing that I guess influences your
6 response of virtually never in terms of accommodation?
7 A. Well, that's a pretty general question. I mean
8 something as simple as we're going to be working in a
9 given room, it's scheduled, you know, you want us to
10 be there in two days, and can we have materials moved
11 out of there that belonged to other trades or
12 equipment of other trades? Yeah, we'll do it. Two
13 days later the room is more crowded than it was when
14 the agreement came through. And largely, and as I
15 said before, each trade had their own specific
16 characteristics of their work, but Creedon's work
17 involved 25 to 30 feet off the ground. So that if
18 they have to get up there and do some work, they need
19 lifts and things that are large to actually get into
20 that space and then reach up into the area where they
21 have to do their work. And it just can't be done if
22 the floor is totally occupied and the only aisle ways
23 are aisle ways just large enough for people to travel
24 through.

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1 Q. Do you have any knowledge as to whether or not
2 it was related to accommodating another trade's work?
3 A. Yes.
4 Q. Is that yes, you have knowledge, or yes, you --
5 A. Yes, I have knowledge and recollection that
6 other trades were involved in some of the problems
7 that Creedon, Creedon experienced.
8 Q. Okay. And to your knowledge, I guess
9 conversely speaking, did Creedon in its work,
10 essentially were there accommodations made for Creedon
11 that impacted other contractors adversely?
12 A. Virtually never.
13 Q. When you say virtually never, I guess a couple
14 things. One is if you're saying virtually never, I
15 assume there is an instance or at least one that
16 you're thinking of where it did happen. That's the
17 first question I would have.
18 A. What I'm doing is I'm using that word to allow
19 for that possibility. Do I think it occurred? I
20 don't have recollection of any time that there were
21 adjustments. Now, remember, Charlie Doble was the
22 individual who was on the frontline. I would see
23 these things occasionally and of course would discuss
24 them frequently, so that Charlie Doble may be aware of

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1 Q. Now, I believe you testified that it was
2 February or March time period when Mr. Doble and Miss
3 Creedon -- well actually, withdrawn.
4 March is when they came to you; is that
5 correct?
6 A. March is when they came to me, yes.
7 Q. Okay. And up until that time period, is your
8 understanding that they felt that they could still
9 work given those conditions?
10 A. If you have a project to do, you're going to
11 continue to work, delayed, you know, delayed,
12 inefficiencies being created for you, productivity
13 being diminished considerably because of these
14 problems. You're going to continue to work, you're
15 going to continue to try to stay on schedule. So that
16 you know, you know, I'm just trying to suggest to you
17 that you just don't walk off the project and, you
18 know, you continue to suffer through the experiences
19 and you make every attempt you can to remedy the
20 problems.
21 Q. Okay, I guess what I'm trying to get at is, the
22 reason they came to you, I think you said, was because
23 of administrative issues. Is that correct? Or for
24 assistance for the administrative issues?

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1 Q. And moving on to page -- I'm going to just
2 refer to these, these are all started off with FE, so
3 I'll just refer to these by their last four numbers
4 for the sake of brevity, so this is still Link A.
5 It's going to be page 4015.

6 **A. 4015?**

7 Q. That's correct. Actually, before I ask you a
8 question on that page, to follow-up on the last
9 question I asked, to your knowledge did Creedon at all
10 times during this project, 2357, did they maintain the
11 good practice you described?

12 **A. They tried.**

13 Q. When you say they tried, what does that mean?
14 **A. It means that the normal forum that would be**
15 **available for that to be done effectively, which**
16 **should be provided by the management on the project,**
17 **was not provided.**

18 Q. When you say the normal form, is there a
19 specific -- and this, maybe I'm saying something
20 that's not correct here. But is there like a NECA,
21 R.S. Means form you're referring to, or is there a
22 place where you're getting a certain form from that
23 you're referring to?

24 **A. No. There is a management practice, especially**

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1 **this project.**

2 Q. So you're saying "forum," not "form." I
3 apologize.

4 **A. Forum, yeah, f-o-r-u-m.**

5 Q. I thought you said "form," I apologize for
6 that.

7 **A. All that, just to --**

8 Q. Well still, though, I appreciate the
9 explanation.

10 **A. You're welcome.**

11 Q. So then are you saying that there were no,
12 there were no meetings that were held on a regular
13 basis to your knowledge?

14 **A. There were meetings held on a regular basis at**
15 **different levels. But those meetings were not**
16 **properly documented or effectively documented. So**
17 **that you can have lots of meetings, and you can**
18 **discuss lots of things, and you can give lots of**
19 **orders, but if it's not written down and documented**
20 **with specific responsibilities assigned, you can't**
21 **later identify who's responsible for a delay or**
22 **damages to other contractors or to the overall**
23 **progress of the project.**

24 Q. Now, to your knowledge, did Creedon maintain

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1 **on large projects, to have meetings with the**
2 **subcontractors and to plan the project in short**
3 **intervals, a week, three weeks, a month. And certain**
4 **events, for example, what's going to happen this week**
5 **are generally set in concrete. And everybody knows**
6 **they're going to have their materials, their equipment**
7 **is going to be delivered, their, whatever inventory**
8 **they need, their personnel is going to be available**
9 **and so forth. And that pretty much wouldn't change.**

10 **But at the same time in those meetings you**
11 **look ahead, maybe two, three weeks ahead, and this is**
12 **a heads-up for all the contractors as to this is what**
13 **we plan in conjunction with the global schedule for**
14 **the project. And does anybody see any problems with**
15 **this? And then as time goes on, the three-week look**
16 **ahead becomes this week. And that's the time that the**
17 **contractors will say, "My suppliers didn't distribute**
18 **what I need to work in this area." Anyone else that**
19 **is dependent upon those precedent activities maybe**
20 **should plan to be doing something else in a different**
21 **place.**

22 **And this is done largely by the**
23 **subcontractors in support of the general contractor.**
24 **This forum did not exist in any effective means during**

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1 any independent notes or memos regarding these
2 meetings? And I'm talking about the meetings with the
3 subcontractors supporting the contractor that you just
4 described.

5 **A. I have seen some notes prepared by the, by**
6 **Charlie Doble or the general foremen. But at this**
7 **time I can't -- I'm anticipating your next question,**
8 **perhaps. But at this time I can't really remember the**
9 **details of the notes that I saw.**

10 Q. Would those notes be separate and apart from
11 daily logs?

12 **A. They could be, in some cases they were, in some**
13 **cases it would be recorded in the daily log.**

14 Q. Okay. And the notes that you recall seeing,
15 they were, do you remember if they were dated before
16 you joined March '04 or were they going forward from
17 March '04?

18 **A. My recollection is both.**

19 Q. Now, looking at page 4015 under "Project notes
20 and specifications," looking at No. 5, "Maintain
21 on-site and update on a daily basis a record set of
22 drawings detailing progress." And that's listed as a,
23 I guess a requirement. If you disagree with that
24 characterization or at least putting someone on notice

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20 (Pages 74 to 77)

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1 that's going to be expected of them for this bid, to
2 your knowledge did Creedon do that?
3 **A. Yes, they did.**
4 Q. And do you know to whom they provided such
5 records detailing their progress?
6 **A. It -- the practice is for each of the**
7 **contractors to maintain those records, and that they**
8 **are available to anyone that would like to look at**
9 **them during normal business hours.**
10 Q. So are you saying then that to your knowledge
11 they did not affirmatively give it to anyone?
12 **A. The practice is that at the conclusion of the**
13 **project, these are finalized and presented as**
14 **as-builts, so that if any work has to be done later,**
15 **maintenance or whatever, they'll know exactly how you**
16 **did your work.**
17 Q. And to your knowledge, Creedon followed that
18 practice you described on this particular project?
19 **A. Yes, they did.**
20 Q. And No. 8 says, "Provide daily reports for
21 Forest Electric Corp., FEC," and then it indicates A,
22 B, C and D, certain things that are to be included in
23 those reports, D indicating "Scope of work completed."
24 Was that done by Creedon to your knowledge?

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1 **A. I guess. I mean it could have been done, but**
2 **to be responsive, I think largely the ones that I've**
3 **seen, Forest Electric had binders of them, and the**
4 **ones that I've seen, you know, pretty much were using**
5 **their standard form and filling that out.**
6 MR. McDONALD: We'll actually take a break
7 right here. I think we have five minutes left on the
8 tape.
9 THE VIDEOGRAPHER: Okay, we're off the
10 record at 11:33.
11 (A brief recess was taken.)
12 THE VIDEOGRAPHER: We're back on the
13 record at 11:43.
14 BY MR. McDONALD:
15 Q. Okay, Mr. Link, before I leave No. 8, I just
16 want to make sure I have a clear understanding. So to
17 your knowledge, is it fair to say that to your
18 knowledge you don't know if Creedon provided any
19 information regarding problems with the schedule or
20 the work to Forest Electric in daily reports?
21 **A. To respond to that question effectively, I**
22 **would have to look at them again.**
23 Q. Okay. Moving on to No. 9 on that same page,
24 again this is 4015, it says on a weekly basis to

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1 **A. Yes, it was.**
2 Q. And same basic question: To whom did Creedon
3 provide these daily reports, if you know?
4 **A. To Forest Electric.**
5 Q. And have you seen those daily reports?
6 **A. Yes, I have.**
7 Q. And is it your understanding that those daily
8 reports indicated, indicated the progress that they
9 were making on the project?
10 **A. The, the daily reports were generally**
11 **responsive to what's issued -- what's indicated there**
12 **in item 8A through D, various levels of details. It**
13 **would vary how the responses were made to each of**
14 **those items on a daily basis.**
15 Q. Would they or did they, I should say, because
16 since you've seen them, did they indicate any
17 particular problems that Creedon had with the way the
18 work was being scheduled or managed?
19 **A. I don't recall. It was a standard form, and**
20 **the standard form was filled out answering the**
21 **questions that were asked and then they were submitted**
22 **to Forest Electric.**
23 Q. Did Creedon have an opportunity to add
24 additional pages to those daily reports?

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21 (Pages 78 to 81)